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INTERVIEW

On history, geography, and radical change in international law

An interview with BS Chimni

SILVIA STEININGER — TOM SPARKS — 2 May, 2018



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These are exciting times for international legal scholarship – on this point, the interviewers and Professor BS Chimni can immediately agree. But what are the consequences of recent challenges to the international legal order for critical approaches? Professor Chimni's groundbreaking work on Third World Approaches to International Law (TWAIL) has contributed greatly to international legal scholarship during the last decades. A fascinating scholar, an enthusiastic teacher, and an effortlessly charismatic speaker, he is also

truly modest, incredibly warm and endlessly supportive of those around him. The Max Planck Institute for Comparative Public Law and International Law was very grateful to host him for a research visit in Heidelberg this spring, after he retired and took up an emeritus Chair at Jawaharlal Nehru University.

Not content to rest on his laurels, he is engaging in a new project: an introduction to international law by re-conceptualizing classic doctrines of international law such as jurisdiction from the perspective of critical approaches. Certainly not a small undertaking, but also a great time to sit down and revisit some of the basic understandings of TWAIL, how one can become a 'TWAILer', what we can learn from Marx, and his advice to young scholars.

You are one of the foremost experts on international law, in particular TWAIL. In a few words, what is TWAIL?

Simply put TWAIL looks at the history and development of international law from the prism of the lived experience of third world peoples. TWAIL is especially focused on the marginal sections of the Third World. We are particularly looking at the problems or prospects under international law of the working class, indigenous peoples, women, and other marginalized sections. Having talked about third world peoples, TWAIL also seeks to extend the (geographical) scope of its understanding by looking at the marginal sections in the First World. The phrase 'Third World' thus also stands for a political project. Geography is of course important as the colonial past unites the different regions of the third world; but TWAIL is in a very significant sense also a political vision. It also offers a very distinctive and alternative account of the history and development of

international law, its doctrines, its institutions, and its practices.

You are one of the few prominent TWAIL scholars who has studied, researched and taught almost exclusively in the Global South. Do you think we will increasingly see scholars from the Global South breaking through into the mainstream?

There are two sets of issues here. The first relates to the state of international legal studies in the Global South, and the other is how far there are hurdles in the process of their voices being heard in the Global North. I think one of the problems why TWAIL has not received the attention it should have in the Global South is partly because of the traditional pedagogic methods. Even today, in my own country India, much of the teaching of international law is either taken casually or is done from very standard, mainstream British textbooks. Therefore the students are not introduced to critical scholarship and that poses a significant problem. But my sense is that the coming generation of teachers of international law are much more familiar and acquainted with that domain. Once they take the critical scholarship into the classroom, things are going to change. The hurdles of their voices being heard in the Global North are many, but one, of course, is that it is very difficult to publish in European and North American law reviews. But I increasingly find the presence of Global South voices even in these reviews.

You have said that there is no blueprint for a TWAIL scholar as people simply express their lived experiences of law and power dynamics in their work. How can people from the “first world in the first world” support the TWAIL project?

I do not see any serious barriers for first world scholars to become 'TWAILers'. As I have stressed TWAIL is all about a certain political project, about supporting marginalized or oppressed sections anywhere, and I believe that they are present as much in the Global North as in the Global South. That itself should make TWAIL hospitable for scholars in the Global North. I think the real issue is how far scholars located in the Global North recognize the history and internal contradictions in the language of mainstream international law scholarship and its distributive consequences. Once you engage with those inner tensions and contradictions then the mainstream approaches tend to start unravelling and once it unravels, your own understanding would spontaneously be a critical understanding of the development of international law. And that is the other aspect of TWAIL: you can use its diversity. You can use an eclectic mix of approaches in order to advance your own understanding of international law. But recognizing the inner tensions and contradictions, both in its history and its present institutions and practices, is to my understanding critical. And that does not happen, because of the same reason it does not happen in TWAIL, I find in most universities that I know of, the mainstream discourse is imparted to students and critical approaches are simply added on. To be sure you cannot experience the conditions of the Third World. Location matters. But like I said, location should also attune you to the problems of the marginalized sections in the Global North. There is no reason you cannot adapt the TWAIL sensibility to their situation.

In “International Institutions Today: An Imperial Global State in the Making” (EJIL, 2004), you offer an extraordinary and detailed critique of the rise of international institutions. Now, in 2018, we observe that your critique is mirrored by

many powerful states. In an age of backlash, Trump, and Brexit, which insights from TWAIL can we use to respond to those challenges?

This is a complex issue, but if you have to look at it very simplistically, what we have seen today are two kinds of backlashes against international institutions. I think both are very temporary.

The first backlash is coming from power, which is impatient. This argument is based on the role that international institutions play in legitimizing an unequal order. One aspect of this role is that they mediate between powerful and weak states. This process of mediation can sometimes be very prolonged, arduous, and complex as often more than 100 odd states negotiate legal regimes. This leads often to a point where some powerful states get disillusioned, which you can see with President Trump. He is not *per se* disillusioned with international institutions, but by his inability to change them at a very short notice. He is not saying 'let's not have NAFTA' or 'let's not have WTO'. He wants to say 'I as the President of the US should have the ability to change the rules overnight' and that cannot happen.

The second kind of challenge is from a different direction. As in the case of Brexit, it emerged from those to whom international institutions have not delivered. People at the bottom are getting impatient with the present global order and that itself makes me hopeful of being able to push international institutions in a more progressive direction. So you are seeing a change in what in my traditional left language people say is the 'correlation of social and political forces'. And this correlation will now work to adjust the

regimes themselves, the mode of functioning of these institutions. And as a final point, the third leg of the challenge is coming out of the rise of the BRIC nations, which contest these institutions, even though mildly. They are saying ‘we should be able to participate more actively in the liberal international order. We have not got our due.’

We are at a historical juncture, where different social and political forces want changes in the working of the international institutions and some adjustment will take place. But as we know from all international structures, those adjustments take time. But I do not think any of them are really challenging the very idea of institutionalization of international relations. I do not think that fundamental challenge is out there as of yet.

From an academic point of view these are exciting times. The traditional international law mode of understanding international institutions simply does not offer sufficient purchase over the changes that are taking place. Since the mainstream has not been able to persuasively explain the changes that have been taking place, people will look for alternative explanations and alternative ways of imagining institutional frameworks. My sense is that we will see class analysis returning; also gender perspectives are increasingly actively deconstructing international institutions. Those voices will be much more heard now.

You are also one of the foremost scholars of Marxist approaches to international law. In your hugely successful book International Law and World Order (2ndedn., CUP 2017, see also the symposium at EJIL:Talk!) you argue for an “integrated Marxist approach” to international law. Why is Marxist thought a useful lens for understating today’s world?

I would say three or four reasons why I believe Marxism offers insights into the history and working of international law which other approaches do not do as adequately. First, there is an intimate connection between the emergence of capitalism in Western Europe, the modern state and the development of international law. It is very important to understand the nature and working of capitalism itself, because these three concepts are very intimately connected and Marxism offers insight into the workings of capitalism that other approaches do not.

This takes me to my second point, that therefore it is also easier to understand the relationship between capitalism, imperialism and international law. I argue that there is an internal relationship between capitalism and imperialism, which was Rosa Luxemburg's argument. In other words, capitalism cannot not be imperialistic. Understanding capitalism requires to understand the concept of imperialism, and only then can understand the evolution and development of international law. We know that there are several explanations for the phenomena of imperialism but I feel that Marxist scholars offered perhaps the most insightful of them.

A third value of adopting a Marxist approach is that it sort-of subverts the basic assumption of mainstream international law scholarship, which is to treat the state as a neutral actor. In the mainstream view, the state is seen as standing above all fractions, class, gender etc. And as a neutral actor it then negotiates with other state actors to pursue national interests. But we know that the whole concept of national interests is so elusive. Unless you deconstruct this concept, unless you understand the nature and character of states, you will not be able to understand the kind of positions

states take in international law and the kind of interests they pursue. What Marxism helps us to do is to problematize the very idea and concept of state in a way that we begin to understand the role different actors play in the framing of international law. For example, class as a category is not used at all to understand the process of international law usually, so I think Marxism helps to focus on that category to demystify our international rules and regimes.

I could go on, but a fourth and final one. Since today international human rights law is so all consuming, everybody does international human rights law, I think Marx offers the most insightful critique of rights. While I personally argue that he was never dismissive of rights discourse, he was among the first to clearly show the limits of rights discourse. This is captured in a sentence in the small pamphlet 'The Critique of the Gotha Programme', where he says rights cannot be higher than the economy and accompanying civilizational developments. What he was trying to do is relate the realization of rights to certain structural and cultural restraints in every society and I think that critique is sustainable even today. In sum, there are a whole range of concepts, which Marx and Marxism offers that allows you a better glimpse into the inner workings of international legal system. But I must add that the commitment is not to Marxism, the commitment is eventually to human emancipation.

Finally, what advice would you give young scholars?

Please do not accept the basic conceptual infrastructure of international law at face value. My simple advice is to do a genealogy of the fundamental doctrines that you use. Once you try and trace back what the doctrinal framework or

practices that we see now meant, and you work yourself backwards through the centuries and get to the source of these ideas, they suddenly start to become more transparent, more clear in their framing whereas now centuries of superimposed practices tend to conceal or veil their central core. I would suggest doing historical analysis of any subject you are researching.

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Cite as: Silvia Steininger & Tom Sparks, “On history, geography, and radical change in international law. An interview with BS Chimni”, *Völkerrechtsblog*, 2 May 2018, doi: [10.17176/20180502-164942](https://doi.org/10.17176/20180502-164942).

ISSN 2510-2567

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